

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

JOHN GAUNCE,	§	No.
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
CAVALRY PORTFOLIO SERVICES, LLC,	§	
	§	
Defendant.	§	
	§	

**PLAINTIFF’S COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff, JOHN GAUNCE (Plaintiff), through his attorneys, KROHN & MOSS, LTD., alleges the following against Defendant, CAVALRY PORTFOLIO SERVICES, LLC (Defendant):

**INTRODUCTION**

1. Plaintiff’s Complaint is based on the Fair Debt Collection Practices Act, *15 U.S.C. 1692 et seq.* (FDCPA).
2. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

**JURISDICTION AND VENUE**

3. Jurisdiction of this court arises pursuant to *15 U.S.C. 1692k(d)*, which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy.”
4. Defendant conducts business in the state of Texas, and therefore, personal jurisdiction is established.

5. Venue is proper pursuant to 28 *U.S.C. 1391(b)(2)*.

### **PARTIES**

6. Plaintiff is a natural person residing at 207 Harbor View Court, Granbury, Hood County, Texas 76048.
7. Plaintiff is a consumer as that term is defined by 15 *U.S.C. 1692a(3)*, and according to Defendant, Plaintiff allegedly owes a debt as that term is defined by 15 *U.S.C. 1692a(5)*.
8. Defendant is an alleged debt collector as that term is defined by 15 *U.S.C. 1692a(6)*, and sought to collect a consumer debt from Plaintiff.
9. Defendant is a collection law firm with a business office in Hawthorne, New York.

### **FACTUAL ALLEGATIONS**

10. Defendant is attempting to collect a debt from Plaintiff on behalf of the original creditor, GMAC (Defendant's internal Account Number assigned to Plaintiff: 12363033).
11. Plaintiff's alleged debt owed to GMAC arises from transactions for personal, family, and household purposes.
12. On November 12, 2008, Plaintiff mailed a cease and desist letter to Defendant. (See Exhibit A)
13. On November 12, 2008, Plaintiff mailed a notice of representation letter to Defendant. (See Exhibit A).
14. Despite receiving Plaintiff's letter, Defendant communicated with Plaintiff after November 12, 2008, in an attempt to collect a debt. (See Defendant's Letter dated August 24, 2009, attached hereto as Exhibit B).

**COUNT I**  
**DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT**

15. Defendant violated the FDCPA based on the following:

- a. Defendant violated §1692c(a)(2) of the FDCPA by communicating with Plaintiff even though Defendant knew Plaintiff was represented by an attorney.
- b. Defendant violated §1692c(c) of the FDCPA by communicating with Plaintiff after Defendant received Plaintiff's cease and desist letter.
- c. Defendant violated §1692d of the FDCPA by engaging in conduct that the natural consequences of which was to harass, oppress, and abuse Plaintiff in connection with the collection of an alleged debt.

WHEREFORE, Plaintiff, JOHN GAUNCE, respectfully requests judgment be entered against Defendant, CAVALRY PORTFOLIO SERVICES, LLC, for the following:

16. Statutory damages of \$1,000.00 pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. 1692k,
17. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. 1692k
18. Any other relief that this Honorable Court deems appropriate.

**DEMAND FOR JURY TRIAL**

PLEASE TAKE NOTICE that Plaintiff, JOHN GAUNCE, demands a jury trial in this case.

Dated: August 19, 2010

RESPECTFULLY SUBMITTED,

KROHN & MOSS, LTD.

By: /s/ Michael S. Agruss

Michael S. Agruss  
California State Bar Number: 259567  
Krohn & Moss, Ltd.  
10474 Santa Monica Blvd., Suite 401  
Los Angeles, CA 90025  
Tel: 323-988-2400 x235  
Fax: 866-583-3695  
magruss@consumerlawcenter.com  
Attorneys for Plaintiff,  
JOHN GAUNCE

## **Exhibit A**

*Debt Counsel for Seniors & the Disabled*



12 November 2008

BY FAX ONLY: 914-347-1973  
Page 1 of 2

Collections Manager  
Cavalry Portfolio Services, LLC  
PO Box 1017  
Hawthorne, NY 10532

Re: John Gaunce & Mildred Gaunce  
Your file or reference No.: 12363033/ GMAC [REDACTED]  
Our file No.: 9744

Dear General Counsel or Compliance Officer:

Please be advised that my law firm represents the above-referenced client for the purpose of enforcing their rights against debt collectors under all applicable federal laws.

This letter serves as notice that my client hereby **disputes** the above-referenced alleged debt and requests **validation** of it in accordance with **15 U.S.C. § 1692g**. Please provide any agreement(s) our client signed with the original creditor, an accounting history showing how you got to the amounts claimed and when this alleged debt was charged off. Unless and until such proof is furnished, we do not recognize any right on your part to attempt to collect any amount from our client through credit reporting or any other means. Moreover, all changes in terms of this alleged debt are hereby objected to and rejected. Please be advised that the continuation of collection activity without adequately responding to these requests may result in a lawsuit against you.

As the client's attorney, I also respectfully inform you that you must **cease** contacting them according to **§§ 1692c(a)(2) AND 1692c(c)** of the **Fair Debt Collection Practices Act**, since this letter not only serves as notice of our representation of this client but also contains a **cease and desist order** signed and notarized by the alleged debtor. If and when you violate these statutes, I will not hesitate to pursue all legal remedies on behalf of my client in the United States District Court.

Very truly yours,

Jerome S. Lamet, Supervising Attorney  
Debt Counsel for the Seniors and the Disabled  
Cc: John Gaunce & Mildred Gaunce

Jerome S. Lamet, Supervising Attorney  
The Pontiac Building  
542 South Dearborn  
Suite 1260  
Chicago, Illinois 60605  
V: (312) 939-2221  
F: (312) 939-2741

TRANSMISSION VERIFICATION REPORT

TIME : 11/12/2008 04:55  
NAME : JEROME LAMET LTD  
FAX : 13129563199  
TEL : 13129392221  
SER.# : BRODBJ797996

DATE, TIME  
FAX NO./NAME  
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*Debt Counsel for Seniors & the Disabled*

**DCSD**

12 November 2008

BY FAX ONLY: 914-347-1973  
Page 1 of 2

Collections Manager  
Cavalry Portfolio Services, LLC  
PO Box 1017  
Hawthorne, NY 10532

Re: John Gaunce & Mildred Gaunce  
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Our file No.: 9744

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Very truly yours, *[Signature]*

## **Exhibit B**



PO Box 1017  
Hawthorne, NY 10532

92100001494  
636708



Phone: (888) 806-5823  
[www.cavalryportfolioservices.com](http://www.cavalryportfolioservices.com)

August 24, 2009



RE: Original Institution: GMAC  
Original Account No.: [REDACTED]  
Cavalry Account No.: 12353033  
Outstanding Balance: [REDACTED]

## SUMMER SAVINGS PROGRAM

Dear JOHN GAUNCE

At Cavalry, we know how important it is to stretch every dollar as far as you can. That's why we've come up with a special **SUMMER SAVINGS PROGRAM** that will help you to pay off this debt.

**40% INSTANT DISCOUNT**

**PAY ONLY**

**30% DISCOUNT OFFER**

**5 EASY INSTALLMENTS OF**

Please call us today at (888) 806-5823 to discuss this fantastic offer, and the many other payment plan options that Cavalry has available to assist you in paying off your account.

If you would like to pay your account via our secure website, or to receive future offers by email, please visit us at <https://payments.cavalryportfolioservices.com>.

Sincerely,  
Latasha Davis

THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS COMMUNICATION IS FROM A DEBT COLLECTOR.  
SEE REVERSE SIDE FOR IMPORTANT INFORMATION CONCERNING YOUR RIGHTS

### 40% INSTANT DISCOUNT PAYMENT COUPON

Please detach and return this portion with your payment in the enclosed envelope. Be sure the address below shows through the return envelope window.

Make Checks and Money Orders Payable to  
Cavalry Portfolio Services, LLC.

JOHN GAUNCE

Original Institution: GMAC  
Original Account No.: [REDACTED]  
Cavalry Account No.: 12353033  
Outstanding Balance: [REDACTED]  
Settlement Amount: [REDACTED]

Cavalry Portfolio Services, LLC  
PO Box 27288  
Tempe, AZ 85285-7288

CAV411  
CAV416 V1  
855708

Notice of Important Rights

We are required by law to notify consumers of the following rights. This list does not include a complete list of rights consumers have under state and federal laws.

**In California:** The state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at 1-877-FTC-HELP or www.ftc.gov. As required by law, you are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations.

**IN COLORADO:** A consumer has the right to request in writing that a debt collector or collection agency cease further communication with the consumer. A written request to cease communication will not prohibit the debt collector or collection agency from taking any other action authorized by law to collect the debt. FOR INFORMATION ABOUT THE COLORADO FAIR DEBT COLLECTION PRACTICES ACT, SEE WWW.AGO.STATE.CO.US/CADC/CADCMAN.CFM.

**IN MASSACHUSETTS:** YOU HAVE THE RIGHT TO MAKE A WRITTEN OR ORAL REQUEST THAT TELEPHONE CALLS REGARDING YOUR DEBT NOT BE MADE TO YOU AT YOUR PLACE OF EMPLOYMENT. ANY SUCH ORAL REQUEST WILL BE VALID FOR ONLY TEN DAYS UNLESS YOU PROVIDE WRITTEN CONFIRMATION OF THE REQUEST POSTMARKED OR DELIVERED WITHIN SEVEN DAYS OF SUCH REQUEST. YOU MAY TERMINATE THIS REQUEST BY WRITING TO THE COLLECTOR. You may contact us by telephone at (866) 483-5139 between 9:00 am and 5:00 pm Eastern Time Monday-Friday or in writing at 7 Skyline Drive, Hawthorne, NY 10532.

**IN MINNESOTA:** THIS COLLECTION AGENCY IS LICENSED BY THE MINNESOTA DEPARTMENT OF COMMERCE.

**In New York City:** This collection agency is licensed by the New York City Department of Consumer Affairs. The license numbers are 1143718, 1126502, 1126497, and 1126494.

**In Tennessee:** This collection agency is licensed by the Collection Service Board, State Department of Commerce and Insurance.

**In Utah:** As required by Utah law, you are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations.

**In North Carolina:** This collection agency is licensed by the North Carolina Department of Insurance. The license numbers are 3824, 3910, 3911, and 3912. Its true name is Cavalry Portfolio Services, LLC. Its true addresses are: (a) 4050 Cotton Center Boulevard, Building 2, Suite 20, Phoenix, Arizona 85040; (b) 7 Skyline Drive, Hawthorne, New York 10532; (c) 9522 E. 47th Place, Suite H, Tulsa, Oklahoma 74145; and (d) 408 St. Peter Street, St. Paul, Minnesota 55102.

Privacy Notice

In accordance with federal regulations, Cavalry is giving you this notice to tell you how we may use non-public personal information about you and your account ("Private Information"). This notice applies whether you are a current or a former customer of Cavalry.

**COLLECTION AND USE OF PRIVATE INFORMATION**

We collect Private Information about you from the following sources:

- ☐ Information we receive from you either directly or indirectly, such as information on applications or other forms, which may include your name, address, social security number and income.
- ☐ Information about your transactions with us or others, such as your account balance and payment history.
- ☐ Information we receive from consumer reporting agencies, such as your credit history and credit worthiness.

**DISCLOSURE OF PRIVATE INFORMATION**

We only disclose information we collect to affiliated and non-affiliated third parties as permitted by the federal Fair Debt Collection Practices Act. We may disclose information we collect to:

- o Credit bureaus
- o The original creditor and entities that have had an ownership interest in your account
- o Entities that provide mailing services on our behalf
- o Entities that provide collection-related services on our behalf
- o Others, such as third parties, when you direct us to share information about you
- o Affiliated and non-affiliated parties if not prohibited by the federal Fair Debt Collection Practices Act or by other applicable laws

**MAINTENANCE OF ACCURATE INFORMATION**

We have established procedures to correct inaccurate information in a timely manner. If you have any reason to believe that our record of your Private Information is incorrect, contact us in writing at 7 Skyline Drive, Hawthorne, New York 10532. We will investigate the situation and, when appropriate, update our records accordingly.

**PROTECTION OF INFORMATION**

We restrict access to Private Information about you to our employees who need this information to provide products and services to you. We maintain physical, electronic, and procedural safeguards that are consistent with federal standards to guard your Private Information.

For account questions, comments, or general customer service, you may contact us at 800-501-0909 Monday through Thursday from 8:00 am to 9:00 pm Eastern Time, Friday from 8:00 am to 8:00 pm Eastern Time and Saturday from 9:00 am to 2:00 pm Eastern Time, or you may write us at 7 Skyline Drive, Hawthorne, New York 10532.

By sending your check, please be aware that you are authorizing Cavalry Portfolio Services, LLC to use information on your check to make a one-time electronic debit from your account at the financial institution indicated on your check.